ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
D. P. MARSHALL, JR., JUDGE

DIVISION II

CA06-782

9 May 2007

OLLIE COX,
APPELLANT

v.

CEDAR CREEK and
CRUM & FORSTER,
APPELLEES

AN APPEAL FROM THE WORKERS' COMPENSATION COMMISSION (F309318)

AFFIRMED IN PART; REVERSED AND REMANDED IN PART

Ollie Cox appeals the Workers' Compensation Commission's decision denying him additional temporary total disability benefits and additional medical treatment for psychological problems, which he claims relate to his compensable low-back injury. Substantial evidence supports the Commission's denial of additional temporary total disability benefits, and we therefore affirm on that issue. We reverse and remand for additional findings of fact about Cox's entitlement to medical treatment for his psychological problems.

I.

While working as a truck driver for Cedar Creek, Cox suffered a compensable low-back injury in July 2003. Cedar Creek and Crum & Forster (the trucking company's carrier) paid for Cox's medical treatment (including back surgery),

temporary total disability benefits, and a ten-percent permanent-impairment rating. In December 2003, Cox's surgeon released him to work and found him to be at a point of maximum medical improvement. Three months later, Cox went to his family doctor, who released Cox to full work duty with no restrictions. Cox testified at the hearing that he had requested this full release from his family doctor only so that he could try to work for a temporary agency as a driving instructor—a job that he decided to forego because of persistent back problems.

Shortly after Cox's release by his family doctor, Cox re-injured himself at home while picking up a laundry basket. After that, he went to his family doctor and other doctors several times in 2004 for his back. With two exceptions, none of these doctors said that Cox could not work because of his persistent back trouble. The first exception was his family doctor, who gave Cox an off-work slip for 23 June 2004 through 1 October 2004. The second exception was Cox's pain management specialist, who noted in an August 2004 letter that "it is also difficult for me to assess when [Cox] could go back to work. I know definitely one thing, Mr. Cox will not be a good candidate as a truck driver . . .."

Cox underwent an independent medical evaluation in December 2004. The IME doctor recommended more back surgery, which was scheduled for a date after the hearing in this case. Cedar Creek and Crum & Forster agreed to resume temporary total disability benefits after that surgery.

Cox also testified at the hearing that, after he re-injured his back, his pain management specialist referred him to a psychologist, Dr. Kenneth Counts. Cox received treatment for depression several times during August and September 2004. Cedar Creek and Crum & Forster initially paid for treatment with the psychologist, but they refused to keep paying on the ground that the treatment was not related to his compensable back injury.

II.

The Commission found that Cox failed to prove he was entitled to additional temporary total disability benefits before 23 June 2004 or after 1 October 2004. To receive temporary total disability benefits, Cox was required to prove that he re-entered a healing period and that he had a total incapacity to earn wages. *Searcy Industrial Laundry, Inc. v. Ferren*, 92 Ark. App. 65, 69, 211 S.W.3d 11, 13 (2005). The Commission determined that Cox met this burden only for the period between late June and early October 2004, but not before or after those dates. We affirm because substantial evidence supports the Commission's findings. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 265, 209 S.W.3d 445, 448 (2005).

Cox argues that the Commission erred in finding that he was entitled to additional temporary total disability benefits only for the period for which he had an off-work slip from his doctor. He says his physical condition was no different before or after the dates given in the slip. As the dissenting Commissioner noted, the record

shows that Cox has had consistent problems with his low back since his injury on the job. And Cox points out—correctly—that an off-work slip has never been a prerequisite for temporary total disability benefits. *Farmers Coop. v. Biles*, 77 Ark. App. 1, 5–6, 69 S.W.3d 899, 902 (2002).

Cox argues that the thaumaturgic words "off-work" are not necessary to be eligible for temporary total disability benefits. We agree. But a person seeking those benefits must prove a total incapacity to earn wages, and an off-work slip is medical evidence of that incapacity. It is undisputed that Cox had problems with his lower back throughout 2004. But problems do not equal total incapacity. Although Cox received treatment for his back problems throughout 2004, the record contains no evidence that Cox could not work at all outside the dates given in the off-work slip. We therefore affirm the Commission's denial of temporary total disability benefits before 23 June 2004 and after 1 October 2004.

III.

We remand for additional findings of fact about Cox's entitlement to medical treatment for his depression. The administrative law judge rejected that relief, finding no evidence that Dr. Kenneth Counts was a licensed psychologist, no evidence that Cox was diagnosed with a condition that met the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), and that Cox failed to prove his treatment with Dr. Counts was reasonable and

necessary in relation to his compensable back injury. The full Commission affirmed and adopted the ALJ's findings. We view all the evidence, and all reasonable inferences from it, in the light most favorable to the Commission's findings, and we will affirm if those findings are supported by substantial evidence. *Stone, supra.*

When the Commission decides a claim, the parties are entitled to know the factual basis for the decision. *Lowe v. Car Care Marketing*, 53 Ark. App. 100, 102, 919 S.W.2d 520, 521 (1996). Moreover, meaningful appellate review requires adequate and specific findings. *Lowe*, 53 Ark. App. at 102, 919 S.W.2d at 521. Here, the ALJ's findings (which the Commission adopted) were incomplete. We therefore reverse and remand for additional findings of fact. *Wright v. American Transportation*,18 Ark. App. 18, 22, 709 S.W.2d 107, 110 (1986).

The statute required Cox to prove that a licensed psychologist diagnosed him with a DSM-IV condition, and that his condition and need for treatment were caused by his compensable low-back injury. Ark. Code Ann. § 11-9-113 (Repl. 2002). The ALJ found no evidence of a valid DSM-IV diagnosis. The record shows otherwise. In the "diagnoses" section of his medical records, Dr. Counts entered the numbers 309.28 and 300.21. Each of those numbers corresponds to a diagnosis from DSM-IV. The ALJ made no findings about the credibility of this evidence of a specific diagnosis. This should be done on remand.

Likewise, the record contains evidence of causation. Cox testified that he saw

Dr. Counts because of a referral by his pain management specialist. Dr. Counts indicated in his notes that Cox "complains of low back problems primarily" and "has some depressive symptoms secondary to his chronic pain, job loss and his other losses." Dr. Counts also noted that Cox would need to obtain medication from his pain management specialist, who then prescribed Cox antidepressant medication, presumably at the psychologist's direction. The ALJ did not address or analyze this evidence in her findings. Instead, the ALJ denied benefits because Cox admitted having non-work-related medical problems that caused him stress and anxiety. Cox, however, only needed to prove that his work injury was a factor in creating his need for psychological treatment. *Williams v. L & W Janitorial, Inc.*, 85 Ark. App. 1, 9–11, 145 S.W.3d 383, 388–389 (2004). On remand, the Commission should also revisit this issue and make specific findings about all the relevant facts on causation.

Finally, the ALJ found that Cox presented no evidence establishing that his psychologist was licensed, as required by the statute. While this is true, we agree with Cox that Cedar Creek did not specifically contend either before or during the hearing that the psychologist was not licensed. Instead, Cedar Creek focused on whether the psychological treatment was reasonable and necessary in relation to Cox's low-back injury. Neither side presented evidence at the hearing about the psychologist's license. The ALJ asked no questions about this issue. Had the parties been on notice that licensure was a point of contention, then they would have had an opportunity to offer

proof about it. *Compare Arkansas Louisiana Gas Co. v. Grooms*, 10 Ark. App. 92, 100–101, 661 S.W.2d 433, 438–439 (1983) (reversing and remanding where the Commission based its decision on a finding of fact that was clearly not in issue or developed by the evidence without notice to the parties of its intent to do so and no opportunity to offer proof on that issue was afforded). Unlike in *Grooms*, the ALJ did not ignore a stipulation about licensure in this case. It seems to us, however, that everyone ignored the issue of licensure before and during the hearing. Therefore, on remand the parties may offer proof on the undeveloped issue of Dr. Counts's licensure.

Affirmed in part; reversed and remanded in part.

PITTMAN, C.J., and MILLER, J., agree.